

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to adopt and amend Sections 3040.1, 3043, 3043.6, 3044 and 3045.1 in the California Code of Regulations (CCR), Title 15 concerning Inmate Credit Earning.

PUBLIC HEARING:

Date and Time: October 26, 2011 – 9:00 am to 10:00 am
Place: Department of Corrections and Rehabilitation
Kern/Colorado Room
1515 S Street
Sacramento, CA. 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close, October 26, 2011, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 3246075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Randy Blackwell, CCII
Regulation and Policy Management Branch
Telephone (916) 445-2220**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Kelly Santoro, Associate Warden
California Substance Abuse Treatment Facility and State Prison
Telephone (559) 992-7210**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Section 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any

modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

This action provides the following:

- The California Department of Corrections and Rehabilitation proposes to amend and or adopt sections 3040.1, 3043, 3043.6, 3044 and 3045.1 of the California Code of Regulations (CCR), Title 15, Division 3, governing inmate credit earning.
- On October 26, 2009, Governor Schwarzenegger signed into law legislation SB X3-18 amending Penal Code Sections 2932, 2933, 2933.2, 2933.3, 2933.5, 2933.6, 2934, 2935, 4019 and adopting new PC Section 2933.05. This new law directly affects an inmate's credit earning and eligibility status. Among other things, this legislation eliminates the Bridging Education Program (BEP). The California Department of Corrections and Rehabilitation (CDCR) is nearing its maximum capacity for housing inmates. In response, the Department is in the process of revising relevant sections of the California Code of Regulations, Title 15, Article 3, Work and Education.
- On January 25, 2010, emergency regulations governing inmate credit earning went into effect based on Senate Bill (SB) X3-18, which was signed into law by Governor Schwarzenegger on October 11, 2009.
- On August 4, 2010, a Certificate of Compliance was issued making the emergency regulation action permanent (OAL file no.2010-0104-02EON) which incorporated and implemented new and revised rules governing inmate credit earning based on SB X3-18.
- This action will clarify existing language which has been found to create confusion to field staff, inmates and the public regarding inmate credit earning. In addition, new language will be adopted which will enable eligible inmates who participate in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care to participate in a Substance Abuse Program where available.